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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: JUN 2 2004

IN RE: [redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. A subsequent appeal and motion to reconsider were dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Morocco who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation in 1995. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 5, 2000. The decision of the district director was affirmed on appeal and on first motion to reconsider by the AAO. *See Decisions of the AAO*, dated April 13, 2001 and July 19, 2001, respectively.

On second motion to reconsider, counsel states that the applicant is filing a motion on the grounds that the denial of the appeal is erroneously based on facts that do not relate to the applicant. *RE: Hakim Benakki, A76-224-808, Motion for Reconsideration,* dated August 16, 2001.

On second motion, counsel submits a brief that was not considered on first motion to reconsider because the AAO failed to receive it. *See Motion to Reconsider*, dated May 7, 2001. *See also Letter from Oran Quintrell, FedEx Customer Relations*, dated May 7, 2001. The entire record was considered in rendering this decision.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is not granted a waiver of his inadmissibility. Counsel points to the history of depression suffered by the applicant's spouse as well as her periods of drug addiction to contend that the applicant provides stability and financial support to his spouse. *RE: Hakim Benakki, A76-224-808, Motion for Reconsideration.* Counsel also states that the applicant's spouse suffers from Hepatitis C. Counsel provides a letter from a mental health professional and a physician to support his assertions. The AAO notes that the provided letters establish that the applicant's wife suffers from Hepatitis C and reports suffering from depression throughout her life. However, the letters do not demonstrate the level or extent of medical care required by the applicant's spouse to combat her medical conditions and the letters do not establish that the applicant's spouse is uniquely situated to provide her with the care she requires. *Letter from John Boling, MSW, LCSW,* dated October 10, 2000 (indicating that

he counseled the applicant and his spouse as part of the applicant's work benefits and failing to establish an ongoing relationship with the applicant's spouse).

Counsel further asserts that the applicant's spouse would suffer financial hardship in the absence of the applicant. Counsel offers tax documents relating to the income earned by the applicant's spouse to support this assertion. While the tax statements offered establish that the earnings of the applicant's spouse were approximately $7000 in 1999, the AAO notes that the submitted letter from a mental health professional states that the applicant's spouse netted approximately $1100 per month in late 2000. *Id.* The record also establishes that the 1999 earnings of the applicant's spouse reflect income from employment on a part-time basis. The record does not establish that the applicant's spouse is unable to work on a full-time basis, as she has in the past, in order to financially support herself in the absence of the applicant. *See Letter from Bruce Heimberger*, dated October 18, 2000. *See also Letter from Vince Paratore, General Manager of the Marina Central Restaurant*, dated January 2, 1998.

Counsel states that the previous opinions of the AAO erroneously indicate that the applicant's spouse contends that she would suffer hardship if she relocated to Morocco to remain with the applicant. *RE: Hakim Benakki, A76-224-808, Motion for Reconsideration.* Counsel states that the applicant's spouse makes no such argument. The AAO notes that while the applicant's wife, as a U.S. citizen, is not required to depart from the United States as a result of the applicant's inadmissibility, relocation to Morocco would enable the applicant's spouse to remain with the applicant which, according to the record, is her preference.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The decision of April 13, 2001 dismissing the appeal is affirmed.